IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 10 of 2003
(Old No. 1030/ 1992)

The Commissioner of Sales Tax,
Uttar Pradesh, Lucknow
…….. Applicant/Revisionist

Versus

S/s Devendra Motor Works
Kotdwar, Garhwal.
…..…… Opposite Party

Shri P. Maulekhi, Addl. Advocate General for the revisionist-State.
None for the respondent / opposite party.

Hon'ble Prafulla C. Pant, J.

This Sales-tax revision was filed before the Allahabad High Court in the year 1992 under Section 11(1) of the U.P. Sales Tax Act, 1948, and the same was transferred to this Court, for its disposal, under Section 35 of the U.P. Reorganization Act, 2000.

2) Following questions of law are to be answered in this revision:

> *1. Whether, the Sales Tax Tribunal was justified in holding that service of notice under Rule 77 of the U.P. Sales Tax Rules was not proper and on its basis was it justified in quashing the assessment order, despite the fact that the notice was allegedly served as per the procedure prescribed under the Rules?*

2. Whether, the Sales Tax Tribunal was justified in setting aside the assessment order passed under Section 21 of the U.P. Sales Tax Act, 1948, despite the fact that notice was allegedly served in accordance with law and the assessing authority has reasons to believe that the part of the turnover had previously escaped assessment?

3) I heard learned Counsel appearing on behalf of the revisionist. No one turned up on behalf of the respondent (assessee), even after service of notice from this Court.

Answer to question Nos. 1 & 2.

4) The assessee, S/S Devendra Motor Works (respondent) deals in motor parts, chesis and spare parts. The matter in question relates to the assessment year 1974-75 (for the period 01.11.1974 to 05.01.1975), regarding which the final assessment order was passed on 11.08.1976 under Rule 41(7) of the U.P. Sales Tax Rules. However, after completion of the assessment, an information was received by the assessing officer from M/s Tata Engineering and Locomotive Works against the assessee. There was nothing on the record to verify the information regarding escape assessment. In the circumstances, notice under Section 21 of the U.P. Sales Tax Act, 1948 was issued against the assessee by the assessing officer, which was received by its Manager, Sri Surendra Singh Sodhi. The said Manager, according to Revenue, appeared before the assessing authority to participate in the proceedings, but no information was supplied regarding purchase of chesis etc. from M/s Tata Engineering and Locomotive Works. The assessing officer, thereafter started proceedings under Section 21 of the aforesaid Act for assessment of tax on the turn over

escaping assessment during the year in question and the tax was imposed on the escaped turnover. Against said order, the assessee went in appeal under Section 9 of the aforesaid Act, before the Assistant Commissioner (Judicial) Sales-tax, who dismissed the appeal for III part of aforesaid assessment year 1974-75 and the turnover of the firm was reduced whereby the assessee got relief in tax assessed for the year 1974-75 (For I & II part). Aggrieved by said order, the assessee preferred second appeal before the Sales Tax Tribunal under Section 10 of the aforesaid Act, which was allowed by the Tribunal. Hence, this appeal by the Revenue. From the perusal of the impugned judgment passed by the Tribunal, it appears that the Tribunal did not treat the service of notice as proper on the assessee and quashed the re-assessment made under Section 21 of the aforesaid Act, on said ground.

5) The relevant provisions of law as contained in Rule 77 of the U.P. Sales Tax Rules, 1948, are quoted as under:

> **"77. Method of service.-**
>
> (1) The service of any notice, summons or order under the Act or the Rules may be effected by any of the following methods, namely;
>
> (a) by giving or tendering a copy thereof to the dealer or person concerned or to his manager, munim, accountant or agent, or to one of his employees or to any adult member of his family residing with him
>
> (b) ……."

From the aforesaid provision, it is clear that the service of notice could have been effected through Manager of the dealer. In the present case, it is clear from the record, that service of

notice was effected on the Manager, Sri Surendra Singh Sodhi, who was an authorized representative of the dealer M/s Devendra Motor Works. It is also clear from the record that the said Manager appeared on behalf of the Company in the proceedings under Section 21 of the aforesaid Act. Section 21 of the U.P. Sales Tax Act, 1948 empowers the assessing authority to re-assess the turnover of the dealer and he is also empowered to assess the tax thereon on the escaped part of the turnover. Since, in the present case, the dealer failed to furnish the record regarding purchase of chesis from M/s Tata Engineering and Locomotive Works, as such, considering the sales-purchase of the previous year the assessing authority assessed the sales and, accordingly, the tax was imposed on the said Company.

6) On the basis of principle of law as contained in ***M/s Hindustan Insulated Cable Co. Vs. Commissioner of Sales Tax, U.P. reported in 1978 U.P. Tax Cases 561,*** it is clear that the expression ***'for any reason'*** contained in Section 21 empowers the Sales Tax Officer to re-assess, where he has reason to believe that the assessee has escaped the liability. In the present case, according to Revenue, there was information from M/s Tata Engineering and Locomotive Works, that the dealer made certain purchases regarding which he did not furnish any information, on being demanded, after serving the notice. As such, the learned Tribunal has erred in law by holding that the assessing authority has wrongly assessed the turnover, particularly, when the re-assessment has been made after considering the sales and purchases of the dealer of previous years. In ***M/s Pradeep Kumar Pramod Kumar Vs. Commissioner of Sales Tax reported in 1994 U.P.Tax Cases 372,*** also the Allahabad High Court has held that the assessing officer can re-assess the turnover on the basis of the available

material, and also for tangible reasons. In view of the aforesaid case law, it appears that the learned Tribunal has erred in law in allowing the appeal of the dealer and quashing the re-assessment made under Section 21 of the aforesaid Act. The finding as to the fact that the service of notice was not proper on the dealer appears to be erroneous in law as the Manager of the dealer was the appropriate person on whom the service could have been made under Rule 77 of the U.P. Sales Tax Rules, 1948.

7) In the circumstances, for the reasons as discussed above, both the questions of law are answered in favour of the Revenue, and the revision is allowed. The impugned order dated 28.01.1992 passed by the Sales Tax Tribunal, Moradabad is quashed in respect of assessment year 1974-75, in respect of I and II Part thereof.

(Prafulla C. Pant, J.)

Dt: 13.09.2005
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